

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

WYNN LAS VEGAS, LLC

**Case No. 28-CA-23070
JD(SF)-16-11**

and

DAVID SACKIN, an Individual

/

**WYNN LAS VEGAS, LLC'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Wynn Las Vegas, LLC (hereinafter "Respondent" or "Wynn"), by and through its counsel of record, the law firm of Kamer Zucker Abbott, hereby files its exceptions to the Decision of Administrative Law Judge John J. McCarrick (hereinafter "ALJ") issued in this case on July 26, 2011. Wynn excepts to the following particulars:

1. To the ALJ's finding and conclusion that, on September 30, 2009, Counsel for the General Counsel filed a Motion to Correct the Record. (Decision at 1, n.1). No such Motion was filed by Counsel for the General Counsel.
2. To the ALJ's finding and conclusion that, on October 14, 2009, Counsel for the General Counsel filed an Errata to Post Hearing Brief. (Decision at 1, n.2). No such Errata was filed by Counsel for the General Counsel.
3. To the ALJ's finding and conclusion that the issue to be decided was whether Respondent "should have the opportunity to re-litigate [sic] the validity of Sackin's . . . discipline." (Decision at 2, ll. 38-39). Respondent asserts that the issue regarding the level of discipline Sackin received was not previously litigated before Administrative Law Judge James M. Kennedy, and was therefore ripe for adjudication before ALJ McCarrick.

4. To the ALJ's refusal to permit Respondent to present any evidence at the hearing. (Decision at 3, n.5, ll. 48-51).

5. To the ALJ's finding and conclusion that ALJ Kennedy's "comments on the degree of discipline that Respondent imposed relate only to Respondent's motive in issuing discipline." (Decision at 4, ll. 6-7).¹

6. To the ALJ's finding and conclusion that the record does not support Respondent's contention that ALJ Kennedy "left open whether a lesser degree of discipline may have been appropriate." (Decision at 4, ll. 7-9).

7. To the ALJ's finding and conclusion that ALJ Kennedy's remarks that "some admonishment or counseling was appropriate" were "gratuitous," "dicta" and "not essential to Judge Kennedy's finding." (Decision at 4, ll. 9-11).

8. To the ALJ's finding and conclusion that "Respondent's argument that some lesser form of discipline would have been justified is mere speculation." (Decision at 4, ll. 13-14).

9. To the ALJ's finding and conclusion that Miller Brewing Co., 254 N.L.R.B. 266 (1981), is inapposite to this case. (Decision at 4, ll. 16-18).

10. To the ALJ's finding and conclusion that Respondent "seeks to relitigate the issue of the lawfulness of Sackin's discipline." (Decision at 4, ll. 25-26). To the contrary, Wynn recognizes for the purposes of this matter that ALJ Kennedy found that the level of discipline imposed upon Sackin was unlawful.² The issue of whether Sackin should have received a lesser

¹ Inasmuch as the ALJ did not permit Respondent to present any testimonial or documentary evidence at the hearing, Respondent is hindered in its ability to cite to the record in support of its exceptions. (Decision at 3, n.5, ll. 48-51). Accordingly, Respondent's Brief in Support of Exceptions, filed concurrently herewith, references exhibits rejected by the ALJ in support of Respondent's position.

² ALJ Kennedy's decision is currently the subject of Exceptions pending before the Board. In a letter filed with the Board on July 29, 2011, Respondent requested that this matter be consolidated for purposes of review with Case No. 28-CA-22818.

form of discipline that would have been issued in the absence of protected activity was never fully addressed in the prior matter, and left open by ALJ Kennedy.

11. To the ALJ's finding and conclusion that ALJ Kennedy rejected the contention that "some lesser form of punishment issued to Sackin would have been lawful." (Decision at 4, ll. 26-29). This conclusion is entirely contrary to ALJ Kennedy's exact words that "some admonishment or counseling was appropriate."

12. To the ALJ's finding and conclusion that "Respondent's opportunity to convince a fact finder that it would have taken disciplinary action against Sackin absent his union or protected conduct has passed." (Decision at 4, ll. 47-49). The issue before ALJ Kennedy was whether the discipline imposed upon Sackin was unlawful, not whether any level of discipline would have been unlawful. Accordingly, the issue of lesser discipline was not litigated as it was not an issue before ALJ Kennedy.

13. To the ALJ's finding and conclusion that Sackin's June 15, 2010 layoff violated sections 8(a)(1) and (3) of the Act. (Decision at 5, ll. 20-21).

14. To the ALJ's recommended remedy and Order. (Decision at 5, ll. 25-40; Decision at 6, l. 14 – 7, l. 24).

DATED this 6th day of September, 2011.

Respectfully submitted,
KAMER ZUCKER ABBOTT

By: 

Gregory J. Kamer, Esq.
Nevada Bar No. 0270
Bryan J. Cohen, Esq.
Nevada Bar No. 8033
3000 West Charleston Blvd., Suite 3
Las Vegas, NV 89102
Tel: (702) 259-8640
Fax: (702) 259-8646
Attorneys for Respondent
Wynn Las Vegas, LLC

CERTIFICATE OF SERVICE

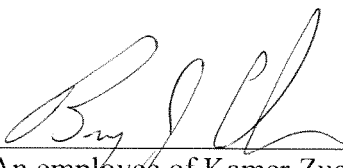
This is to certify that on the 6th day of September, 2011, the undersigned, an employee of Kamer Zucker Abbott, electronically filed the foregoing Wynn Las Vegas, LLC's Exceptions to the Decision of the Administrative Law Judge, via the National Labor Relations Board E-Gov Electronic Filing system, and placed a copy of the Exceptions in the United States mail, postage prepaid, and addressed as follows:

Stephen E. Wamser, Resident Officer
National Labor Relations Board
Region 28
600 Las Vegas Blvd. South, Suite 400
Las Vegas, Nevada 89101
Stephen.Wamser@nrlrb.gov

Mara-Louise Anzalone, Esq.
Counsel for the General Counsel
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1800
Phoenix, Arizona 85004
Mara-Louise.anzalone@nrlrb.gov

Mr. David Sackin
1205 Spottswood Avenue
Las Vegas, Nevada 89081
solitaryamerican@yahoo.com

By:


An employee of Kamer Zucker Abbott